

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4116 of 1984

with

SPECIAL CIVIL APPLICATION No 4836 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

MAHAVIRSINH BHAVUBHA JADEJA & ANR.

Versus

STATE OF GUJARAT & ANR.

Appearance:

Shri H.J. Nanavaty, Advocate, for the Petitioner

(in Special Civil Application No. 4116 of 1984)

Shri P.V. Hathi, Advocate, for the Petitioner (in
Special Civil Application No. 4836 of 1984)

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents (in both matters)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 05/07/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No. 1 herein) on 22nd March 1984 is under challenge in both these petitions. Since the same order is under challenge in both these petitions, common questions of fact and law are found arising therein. I have therefore thought it fit to dispose of both these petitions by this common judgment of mine.

2. The petitioner of Special Civil Application No. 4116 of 1984 (the first petition for convenience) applied on 6th July 1981 for what is popularly known as the N.A. permission under sec. 65 of the Bombay Land Revenue Code, 1879 (the Code for brief). By the order passed by the taluka panchayat at Gondal (respondent No. 2 herein) which is incidentally the petitioner of Special Civil Application No. 4836 of 1984 (the second petition for convenience) on 5th October 1981, such N.A. permission came to be granted. Its copy is at Annexure A to the first petition and at Annexure C to the second petition. It appears that the aforesaid order was passed on the basis of one resolution No. 102 passed by the Executive Committee of the petitioner of the second petition held on 25th September 1981. A copy of the minutes of the said meeting is at Annexure B to the second petition. The aforesaid order of 5th October 1981 passed by the petitioner of the second petition appears to have come to the notice of the concerned officer of the State Government (respondent No. 1 to each petition). He appears to have found it not according to law. Its revision was contemplated under sec. 211 of the Code. A show-cause notice thereupon came to be issued to the petitioner of the first petition on 31st January 1984 calling upon him to show cause why the aforesaid order passed on 5th October 1981 granting the N.A. permission should not be cancelled. After hearing the petitioner of the first petition, by the order passed on 23rd March 1984, respondent No. 1 cancelled the N.A. permission granted by the petitioner of the second petition on 5th October 1981. Its copy is at Annexure C to the first petition and at Annexure D to the second petition. Both the petitioners were aggrieved thereby and they have therefore approached this Court by means of their respective petition under article 226 of the Constitution of India for questioning its correctness.

3. As pointed out hereinabove, the N.A. permission was granted by the order passed on 5th October 1981. The show-cause notice for its revision under sec. 211 of the Code was issued on 31st January 1984, that is, nearly 2 1/2 years from the date of the order in question. This

could not have been done in view of the binding ruling of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha and others reported in (1969) 10 G.L.R. 992. In that view of the matter, the impugned order cannot be sustained in law. It has to be quashed and set aside.

4. Learned Assistant Government Pleader Shri Sompura for the respondents has however submitted that the land involved in both these petitions has come to be acquired by the State Government. The notification under sec. 4 of the Land Acquisition Act, 1894 was issued on 19th February 1996. It was followed by the notification under sec. 6 thereof issued on 2nd April 1996. The consent award for compensation was passed on 30th April 1996. In that view of the matter, runs the submission of learned Assistant Government Pleader Shri Sompura for the respondents that both these petitions can be said to have become infructuous. As against this, both learned Advocate Shri Nanavati for the petitioner of the first petition and learned Advocate Shri Hathi for the petitioner of the second petition have urged that the consent award for compensation was passed on the basis of the N.A. permission granted by the order passed on 5th October 1981. If both these petitions are disposed of as having become infructuous on account of acquisition of the land in question by the State Government, complications about the consent award might arise.

5. I find considerable force in the submissions urged before me by learned Advocate Shri Nanavati and learned Advocate Shri Hathi for their respective petitioners. Even otherwise, I have found that the impugned order at Annexure C to the first petition and at Annexure D to the second petition cannot be sustained in law. I think both these petitions deserve to be accepted on that ground alone irrespective of acquisition of the land in question by the State Government.

6. In the result, both these petitions are accepted. The order passed by and on behalf of the State Government on 22nd March 1984 at Annexure C to the first petition and at Annexure D to the second petition is quashed and set aside. Rule issued in each petition is accordingly made absolute with no order as to costs.
